



OFFICE *of the* ATTORNEY GENERAL
GREG ABBOTT

December 17, 2002

Ms. Doreen L. Wheeler
Assistant General Counsel
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

Ms. Maureen Kelly
Public Information Officer
Office of Consumer Credit Commissioner
2601 North Lamar Boulevard
Austin, Texas 78705

OR2002-7232

Dear Ms. Wheeler and Ms. Kelly:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 173849.

The Office of Consumer Credit Commissioner (the "commissioner") received two requests for information pertaining to EMC Mortgage, a commission licensee. You state that some responsive information has been released to the requestor. You claim that a portion of the requested information is excepted from disclosure under sections 552.101, 552.112, and 552.136 of the Government Code. We have considered the exceptions you claim and reviewed the submitted information.

You claim that portions of the submitted information are excepted from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 342.552 of the Finance Code.¹ Section 342.552 provides in pertinent part:

¹ Section 552.101 of the Government Code excepts from disclosure information considered to be confidential by law, either constitutional, statutory, or by judicial decision. Section 552.101 encompasses

(a) The commissioner or the commissioner's representative shall, at the times the commissioner considers necessary:

(1) examine each place of business of each authorized lender; and

(2) investigate the lender's transactions, including loans, and records, including books, accounts, papers, and correspondence, to the extent the transactions and records pertain to the business regulated under this chapter.

....

(d) Information obtained under this section is confidential.

Fin. Code § 342.552(a), (d). You assert that the commissioner is authorized under Chapter 342 of the Finance Code to license, supervise, and regulate certain business entities. You state that this authority empowers the commissioner to conduct regular exams and investigations of licensees. *See* Fin. Code §342.552. You also state that the information at issue is part of a response to such an examination and that the submitted documents that support the examination report were obtained by commissioner examiners from the investigated party pursuant to section 342.552. Therefore, we agree that the submitted documentation which supports and relates to the examination report is confidential under section 342.552(d) of the Finance Code. Accordingly, you must withhold the information that we have marked from disclosure pursuant to section 552.101 of the Government Code in conjunction with section 342.552(d) of the Finance Code.²

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general

information protected by other statutes.

²As our ruling is dispositive, we do not address your other claimed exceptions to disclosure.

have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. We note that a third party may challenge this ruling by filing suit seeking to withhold information from a requestor. Gov't Code § 552.325. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Cindy Nettles
Assistant Attorney General
Open Records Division

CN/jh

Ref: ID# 173849

Enc. Submitted documents

c: Mr. Jude Alcegueire
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(w/o enclosures)